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TAXATION OF QUASI-PUBLIC CORPORATIONS IN THE STATE OF OHIO AND THE FRANCHISE TAX.

Like many other American states, the Commonwealth of Ohio continues in force a system of taxation which, in principle at least, is a survival of the economic conditions of the early part of the century. Here, as elsewhere, the general property tax prevails, and forms the chief source of revenue for local and state purposes.

Within the past few years efforts have been made to bring the taxing system of the state more in harmony with present economic conditions. But the efforts have been confined to this or that class of corporations, and, while based on correct principles, they have added confusion to a system already far from simple and leave much still to be desired. These enactments pursued no uniform or definite plan, nor have they been based on any exact knowledge of the comparative burdens borne by different classes of wealth or the incidence of existing taxes. In consequence, the general property tax is found side by side with the gross receipts tax, the excise tax and assessment by the unit rule obtained from the stock, bonds and earnings—all imposed

on corporations essentially alike in character and differing only in name.

The discussion which follows is confined to corporations of a *quasi*-public character—those "charged with a public use"—and does not deal with the taxation of banks, trust or insurance companies or the many forms of industrial and manufacturing enterprises.

Steam Railroads.

Steam railroads are still assessed for taxation in Ohio by methods long since abandoned by more progressive states. The plan is a modified survival of the general property tax and has persisted by inertia. While most states have appreciated their inability to measure railroad values by an actual inventory of constituent elements, and have adopted methods based on the idea that the road is a unit or a system, and that its value includes its franchise, and is indicated by its capital stock or earning capacity, Ohio has clung to the theory that railroad values are to be determined in the same manner as the value of a farm or a stock of goods or household furniture by enumerating the separate valuations of its real estate, right of way, rails, rolling stock and equipment. As in the case of other forms of property, valuations are made up by the auditors of the counties through which the roads pass or within which they have their tracks or roadway. These are revised annually at a meeting of the auditors of the several counties through which a road may pass, who meet and assess the property, ostensibly by an examination of the road bed, equipment, cars, locomotives, machinery, tools, moneys, credits, etc. The valuations are then certified to the state auditor, by whom the total assessment is redistributed among the counties, cities, villages, townships or districts through which the road passes, according to certain rules, and placed upon the local duplicates by the local officials.*

*Revised Statutes, Sections 2770–74.

The plan is primitive and the results unsatisfactory. It not infrequently favors dishonesty on the part of officials. Valuations are low and tend to become lower, and bear no necessary relation to the assessment of other forms of wealth. While the burdens of other property have increased in recent years, the valuations on railroad property have either diminished or remained stationary.*

As indicative of the truth of the latter statement, it appears from an examination of available statistics, that the assessments and gross earnings of six railroad systems, lying wholly within the state, during the years 1885, 1890 and 1896 were as follows: †

	1885.	1890.	1896.
Earnings	$4,498,423	$6,097,131	$10,266,465
Assessments . . .	8,944,386	10,165,174	10,000,328

These six roads are believed to be in no sense exceptional and are chosen only because they are about the only lines lying wholly within Ohio of which statistics could be obtained for so extended a period. These figures show that while the gross earnings have increased in eleven years over 200 per cent, or from four and one-half million to ten and one-quarter million dollars, the assessments have increased but little over a million dollars. It needs no argument to show that gross earnings, while not conclusive as to the value of a railway property, are strongly indicative of its prosperity. And the same disparity has been found to exist in the case of all roads that have been examined.

By way of further example, it appears that the assessment of the Cleveland & Pittsburg Railroad, probably one of

* In addition to the above described local taxes there was passed in 1896 an act, which will be referred to later, by which the gross receipts of railroads and some other corporations are taxed at the rate of one-half of one per cent for state purposes. From this tax the receipts from railroads in 1897 were $326,560, which is not included in the tables and to this extent modifies the results.

† These roads were the Valley Railway, the Cleveland, Lorain & Wheeling, the Columbus, Hocking Valley & Toledo, the Cleveland & Marietta, the Ohio Southern and the Wheeling & Lake Erie. The earnings are taken from Poor's Manual of Railroads, the assessments from the Auditor of State's Report.

the most advantageously located and profitable lines in Ohio (86½ per cent of the mileage of which is within the state) has diminished $150,000 in eleven years, while the gross earnings rose from $2,786,990 in 1885 to $3,226,614 in 1896. The assessment of the N. Y. C. & St. L. (familiarly known as the Nickel Plate) was nearly the same in 1885 as it is to-day, while the earnings increased from $3,207,592 in that year to $5,587,766 in 1896.*

Similar results appear relative to the Lake Shore Railroad, one of the most prosperous transportation systems in America, the assessed valuation and gross earnings of which for three separate years from 1878 to 1896 are as follows:

	Assessment.	Gross Earnings.
1878	$12,996,609	$13,505,159
1892	12,457,745	22,415,382
1896	11,884,071	20,193,958

An examination of the total assessment of all railroad values in the state shows an absolute decrease between 1894 and 1896 of $2,954,000 while during this period one hundred miles of new track were laid.

But not only has the assessment of railroad values either diminished or remained stationary in recent years, while that of other forms of property has increased, and while the earning capacity of the roads themselves has grown rapidly, but the valuation of the roads is both absolutely and relatively lower than that of any other class of realty in the state. At the present time it is probably not more than from 25 to 30 per cent of the true market value of such property. At least this is the estimate made by the Ohio Tax Commission in 1893,† an estimate obtained by capitalizing the net earnings of the roads at 6 per cent. This they

* The gross earnings of the entire system are given, not the earnings within the state. But the result is probably substantially the same. The same is true of the Lake Shore & Michigan Southern.

† Report of the Tax Commission of Ohio, p. 56.

assumed would be a fair valuation for purposes of comparison.

The commission, by capitalizing the net earnings of the roads in this way, found the real value properly chargeable to Ohio, of fifteen of the leading lines which cross the state, to be $144,608,992 and the assessed valuation as returned by the Auditor of State to be but $42,023,894, or a trifle over 29 per cent. Of these roads, twelve lie wholly within the confines of Ohio.*

But aside from the fact that under this plan of assessment the roads seem to escape their equitable share of burdens, the system is most unfair as between different companies. Assessed as the roads are by officials who are ignorant of railway values and how they are created, and who have at best but a local knowledge of the property, and that not the knowledge of an expert, there is no uniformity in the valuation of different railroads, save what is given by the State Board of Equalization, and this, of necessity, is very uncertain. The Tax Commission of 1893 examined the operation of the system from this point of view and found that the taxes paid by the different roads ranged all the way from 5.16 per cent of the *net* earnings of some roads, to 17.94 per cent of the *net* earnings of others, the average rate being from 6 to 8 per cent.†

According to the same authority, the rate of taxation on investments in real estate in the city of Cleveland ranged from 16 to 25 per cent of its *gross* rentals.‡

In brief, the experience of the state and the evidence of statistics seem to demonstrate that the plan now employed in Ohio is at fault in many respects.

First. It offers opportunity for the corruption of officials by the railroads.

Second. The valuations when reached are the merest sort

* Report of the Tax Commission of Ohio, p. 55.
† Idem., p. 59.
‡ Idem., 59.

of conjecture. While a plat of land may be valued by examination, the various constituent elements which go to make up a railroad can only be appraised by experts.

Third. Assessment by such means does not reach the franchise value of a road, or its earning capacity as represented in the capital stock, which escapes taxation entirely save in so far as it is returned in the hands of the personal holders. It thus bears no sort of relation to the real value of the property, for stock values or earnings cannot be taken into consideration by the assessors.

Fourth. The plan further discriminates between different roads, as it fails to consider differences in costs of construction or operation, and assumes all values to be equal which have the same appearance.

Sleeping, Palace, Parlor, Chair, Dining and Buffet Cars and Freight Line and Equipment Companies.

An act known as the Griffin Law was passed May 21, 1894,* taxing sleeping, palace, chair, dining or buffet cars. The tax is based on "the proportion of the capital stock of the company representing rolling stock, which the miles of railroad over which such company runs cars in Ohio bears to the entire number of miles in Ohio and elsewhere over which such company runs cars, and such other rules and evidences as will enable the board to determine fairly and equitably the amount and value of the capital stock of such company representing capital and property owned and used in the State of Ohio." This tax is declared to be an excise tax, and is assessed at the rate of 1 per cent on the valuation reached by the above means by the State Board of Appraisers and Assessors as properly chargeable to Ohio. In making up the return, real estate assessed and taxed locally in the state is to be deducted. Collections from this source go to the state treasury. Later the provisions of the

* 91 O. L., 408.

act were extended to freight line and equipment companies.* The collections in 1896 and 1898 under these laws were as follows:

	1896.	1898.
Pullman Palace Car Company	$3,465.00	$3,699.66
Wagner " "	2,296.00	2,214.00
Freight Line and Equipment Companies .	7,363.00	7,689.57
	$13,124.00	$13,603.23

Electric Light, Illuminating Gas, Natural Gas, Pipe Line, Water Works, Street Railroad and Steam Railroad Companies and Companies Supplying Messenger or Signal Service.

By an act passed March 19, 1896,† the State Board of Appraisers and Assessors is authorized to ascertain the gross receipts of all electric light, illuminating gas, natural gas, pipe line, water works, street railroad and steam railroad companies and companies supplying messengers or signal service from business done wholly within the state. The board is further directed to ascertain of a railroad partly within and partly without the state what proportion of the gross earnings is to be credited to Ohio. The means by which this is reached are as follows: " The gross earnings from its operation of the entire line or system shall be divided by the total number of miles operated to obtain the average gross earnings per mile, and the gross earnings from the operation per mile multiplied by the number of miles operated within the state" are considered the gross earnings of Ohio for the purpose of the act.

Upon the receipts as thus obtained a tax of one-half of one per cent is levied, which in 1897, the first year of its operation, yielded the following sums:

* 92 O. L., 89.

† 92 O. L., 79.

Electric Light Companies	$11,142 74
Gas Companies (artificial)	19,173 29
Natural Gas Companies	8,266 93
Pipe Line Companies	29,763 56
Water Works Companies	2,368 72
Street Railway Companies	42,185 30
Messenger or Signal Companies	650 04
Railroad Companies (steam)	326,559 71
Total	$440,110 29

Express Companies and Taxation by the "Unit Rule."

Express companies are probably more heavily taxed than any other class of corporations in Ohio. The plan is a mixed one, there being three distinct and separate taxes laid upon them: (1) the ordinary local tax placed on the real estate of the companies; (2) an excise tax of two per cent on the gross earnings of the companies from business done within the state, the receipts from which are devoted to state purposes; (3) a tax by what may be termed the "unit rule," based upon the estimated value of the corporate property within the state, as determined by the gross earnings, capital stock and other indexes. The last two only require notice in this connection.

The excise tax was laid in 1894* by an act which provides that companies shall report annually to the auditor of the state, who, with the Board of Appraisors and Assessors, shall determine the "entire receipts of express companies for business done within Ohio, after deducting the sums paid for transportation of freight."

The power of the state to tax gross earnings was early raised in the case of Western Union Telegraph Company *v.* Mayer, Treasurer,† it being contended that an act taxing the gross receipts of a telegraph company at the same rate as other *property* was in contravention of the "commerce clause" of the federal constitution. But the court held,

*91 O. L., 237.
†28 O. S., 521.

quoting the Delaware Railroad Tax Case,* that it was not unconstitutional nor did it violate the state constitution. In Ratterman *v.* Western Union Telegraph Company † the Supreme Court of the United States considered the same case, and sustained the state court in so far as the tax applied to receipts from business done wholly within the limits of the state, but held it invalid as to interstate or foreign business.

The Act of 1894 was also assailed in the courts but was sustained as falling within the rule laid down in Western Union Telegraph Company *v.* Mayer *supra*, as the tax in question was assessed only on receipts from state business.‡

For the year 1896 the tax yielded the following sums.§

Adams Express Company	$3,420 00
American Express Company	3,390 00
National Express Company	232 00
Pacific Express Company	88 00
Southern Express Company	146 00
United States Express Company	5,017 co
Wells Fargo Express Company	1,110 00
	$13,403 00

The third form of taxation on express companies is levied on telephone and telegraph companies as well. This law was also passed in 1894. ‖ Unlike the gross receipts tax before referred to this is in the nature of a local tax, although the local valuation is obtained by the state board, and by it certified to the local officials. Under this act, known as the Nichols Law, the total state valuation of express, telephone and telegraph companies is determined from the statements of the companies themselves and is found by taking the proportion of mileage run by the express companies or miles of

* 18 Wall., 231.
† 127 U. S., 411.
‡ Express Company *v.* The State, 55 O. S., 69.
§ Auditor of State's Report, 1896, p. 404.
‖ 91 O. L., 220.

wire of the telephone and telegraph companies in the state to the total mileage run or miles of wire of the companies in this country or elsewhere, and assuming that the same proportion or percentage of the capital stock or property of the companies should be credited to the state duplicate. To secure this, statements are required from the companies of (1) the number of shares of their capital stock; (2) the par and market values thereof; (3) the length of miles of wire of the telegraph and telephone companies both within and without the state; (4) the gross receipts of telegraph and express companies, (*a*) from all their business, (*b*) from business done in the state, and (*c*) of each office within the state;(5) the length of water and land routes of express companies and so much as are within Ohio, as well as such other facts as the state auditor may require. And in making up the valuation of such companies for the purpose of taxation, it is provided that "the board shall be guided by the value of said property as determined by the value of the entire capital stock of said companies and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said company within the State of Ohio, in proportion which the same bears to the entire property of said companies as determined by the value of the capital stock thereof and the other evidences and rules as aforesaid."

From the valuation thus obtained, the state auditor first deducts the value of any real estate owned by the company in the state and taxed locally.

The value remaining of telegraph and telephone companies is distributed among the several counties through or into which the lines run, in the proportion that the miles of line in the respective counties bears to the total mileage within the state. The valuation of express companies is distributed to the counties in the proportion which the gross receipts of a county bear to the gross receipts of the entire state. By the same method, the valuation assigned

to the counties is by them placed on the duplicates of the minor civil divisions and by them taxed at the local rate.

Four express companies submitted to the act and in 1896 were certified to the county auditors. Five telegraph and fifty-six telephone companies also accepted it and paid their taxes. The valuation placed on these companies by the state board was as follows:

Four express companies	$140,926
Five telegraph companies	1,233,235
Fifty-six telephone companies	1,048,218
	$2,422,379

Four other companies, whose assessments under the act were as follows, enjoined the state board in the United States courts from certifying their valuation to the county auditors:

Adams Express Company	$513,052
American Express Company	445,482
United States Express Company	472,396
Western Union Telegraph Company	2,127,730
	$3,558,660

Total valuation certified to county auditors	$2,422,379
Total valuation not certified to county auditors	3,558,660
Grand total added to duplicate	$5,981,039*

These valuations do not include the real estate owned by the companies in Ohio.

The constitutionality of the act was raised in a feigned issue by mandamus in the Ohio courts in the case of State, *ex rel.*, *v.* Jones, auditor,† the relator alleging refusal on the part of the county auditor to certify the apportionment to the county on the ground that the act was unconstitutional. On argument, the defendant contended *inter alia:*

* See Auditor of State's Report, 1896, p. 403.
† 51 O. S. 492.

Second—"The property of said company is not assessed at its true value in money, because the value of the capital stock is taken as a guide, thereby adding to the intrinsic value of the tangible property in the state a value inherent in the capital stock and due to the franchise conferred by other states, the good will and the business of the company and the value of its property in other states."

Sixth—"The act is in violation of the 'Commerce clause' of the Federal Constitution."

The court in sustaining the law held by Dickman, C. J., as to the former contention.

"But the property of a corporation may be regarded in the aggregate, as a unit, an entirety, as a plant designed for a specific object; and its value may be estimated not in part but taken as a whole" . . .

"We discover no satisfactory reason why the same rule should not apply to the valuation of corporate property,—why the selling value of the capital stock, as affected by the good will of the business, should be excluded from the consideration of the board of appraisors and assessors under the Nichols Law, . . . especially as the capital stock when paid up, practically represents at least, an equal value of the property."

Thereafter an action was brought in the federal courts contesting the validity of the act in question in Adams Express Co. *v.* Ohio State Auditor. The issues in this case were *bona fide* and the case was learnedly argued by counsel. But by a divided court of five to four the act was sustained and valuation by the "unit rule" upheld on grounds previously laid down as to railroads, telegraph and sleeping car companies.* The court said:

"As to railroad, telegraph and sleeping car companies engaged in interstate commerce, it has often been held by this court, that their property in the several states through which their lines or business extended, might be valued as a unit for purposes of taxation, taking into consideration the uses to which it was put, and all the elements making up aggregate value, and that a proportion of the whole, fairly and properly ascertained, might be taxed by the particular state, without violating any federal restriction."

"The valuation was thus not confined to the wires, poles and instruments of the telegraph company; or the road bed, ties, rails and

*165 U. S., 194.

spikes of the railroad company; or the cars of the sleeping car company; but included the proportionate part of the value resulting from the combination of the means by which the business was carried on." . . .

"The taxation is essentially a property tax and as such not an interference with interstate commerce."*

The importance of this decision in the taxation of *quasi*-public corporations of an interstate character cannot be overestimated. The early decisions of the federal courts rendered it difficult, if not impossible, for the individual states to tax either the total state earnings of transportation and transmission companies or the franchise value of companies of an interstate character. As a consequence, as consolidation advanced, and the proportion of earnings from interstate traffic grew, a great part of such values was relieved from taxation. In consequence, our states were put to many shifts to accommodate themselves to the holdings of the United States courts, and the methods resorted to for taxing such companies presented a chaos of practice without unity or reason. License, net and gross receipts and capital stock taxes existed side by side with the general property tax, sometimes assessed by state boards, sometimes by a combination of county assessors, sometimes by the assessors of the individual counties through which the companies passed.

The greatest inequality resulted in consequence. As great differences existed in the burdens imposed on competing roads as that between the assessments of transmission companies and other forms of wealth. Moreover, for years express, sleeping, palace, pipe line and freight line companies were assessed at little more than a nominal valuation. This is seen in the relative valuations placed on express companies in Ohio under the old plan of assessing tangible

*The same principle is upheld in Western Union Telegraph Company *v.* Massachusetts, 125 U. S., 530; Massachusetts *v.* Western Union Telegraph Company, 141 U. S., 40; Western Union Telegraph Company *v.* Taggart, 163 U. S., 1, as to Telegraph Companies; in Pullman Car Co. *v.* Pennsylvania, 141 U. S., 18, as to Palace Car Companies, and in Maine *v.* Grand Trunk Railway, 142 U. S., 217, and Pittsburg Railway Co. *v.* Backus, 154 U. S., 421, as to railroads.

property and the new one of assessment of the franchise by the "unit" rule. The assessments under the two plans were as follows, the valuations of 1895 being given:*

EXPRESS COMPANIES.	Valuation under former plan of taxing tangible property including money and credits, but not realty.	Valuation by unit rule.	Gross receipts of the companies in Ohio.
Adams	$42,065	$533,095	$282,181
American	23,430	499,274	275,446
United States	28,438	488,264	358,519
Total	$93,933	$1,520,633	$916,146

This plan of assessment is susceptible of great development. If the decisions stand unreversed, as they are likely to do, it may be applied to all forms of transmission companies as well as other corporations, classed as natural monopolies, whose value is represented, not by tangible realty or personalty, or any ordinary indexes of assessment, but by franchise value as represented in the capital stock and the bonds. The plan enables a state to reach interstate traffic indirectly by taxing that to which such earnings give value. It, moreover, taxes such properties in the same way as other forms of wealth, and enables our cities to place street railway companies, gas, water and electric lighting companies on a basis which fairly represents their value and reaches their franchise and capital stock for taxation.

Street Railways, Gas, Water and Electric Lighting Companies.

While a tendency has been manifest in many quarters in recent years to abandon the property tax as applied to steam railroads, such corporations as street railways, electric lighting, gas, water and like corporations still generally remain on the tax duplicate assessed as motors, cars, horses,

* Valuation taken from report of case of Adams Express *v.* Ohio State Auditor, *supra*.

machinery, tools, right of way, etc., or as pipes, wires, plants, etc. The inadequacy of the general property tax under modern corporate conditions is nowhere more apparent than in the taxation of such properties. Nor can such properties ever be properly assessed under such a plan. Even with valuations made by experts they would include only an inventory of tangible property, and this, in the majority of cases, is but a tithe of the real value of such companies. How unjust the general property tax is, as based on visible realty and personalty, will appear from an examination of the assessments of several street railroad companies given below. The assessments are taken from the local tax duplicates of the several cities. The actual value is obtained by adding the market value of the stock to the par value of the bonds as obtained from stock market quotations:

	Assessment for taxation in 1896.	Actual value.
Cleveland Electric Railway	$1,121,320	$9,870,000
Cleveland City Railway	678,460	6,560,000
Columbus Street Railway	419,700	4,802,000
Cincinnati Inclined-Plane Railway	65,890	955,000
Cincinnati Street Railway Company	637,760	18,140,000
Total	$2,923,130	$40,327,000

The above list might be greatly extended, and the writer has every reason to suppose that the same ratio between assessment and actual value would be found to exist. No attempt has been made to make comparison of the ratio between the assessed and the actual values of gas and electric lighting companies as quotations of their stock are not easily obtainable. From the nature of their property, however, it is safe to assume that valuation based on tangible realty and personalty would display an even greater discrepancy than appears in the case of street railways. Enough has been presented, it is believed, to demonstrate that the general property tax has broken down in the face of modern

corporate conditions and the impossibility of getting at the value of *quasi*-public municipal corporations from actual view of their property, or an inventory of their visible assets. It must be reached by other means.

Let us consider the taxation of the class of wealth enumerated herein as disclosed by the above discussion. In the first place, it is apparent that the legislature has followed no settled or uniform plan or principle in its enactments. In so far as the antiquated general property tax has been abandoned, it has been in conformity to the general conviction that such corporations as are here referred to were not bearing their adequate share of burdens. To what extent they were being relieved, or why the plan applied to other forms of wealth failed when applied to them was not understood. Any expedient, therefore, which seemed to offer improvement and which would not violate constitutional restriction was embraced.

As a result, and to recapitulate, we find corporations substantially identical in character taxed in Ohio by six different methods; by local assessment, as in the case of railroads and local *quasi*-public corporations; upon the capital stock as obtained under the Griffin Law; in the form of an excise tax assessed at an *ad valorem* rate of 1 per cent; by a tax of one-half of one per cent on the gross earnings within and without the state; by an excise tax of 2 per cent on the gross earnings of express companies for business done wholly within the state; by the "unit rule" under the Nichols Law, on express, telephone and telegraph companies. And it may with safety be ventured that none of these methods adequately tax the various subjects to which they apply. The express companies are assessed according to the most severe method of reckoning and are also subject to local rates, as are telephone and telegraph companies, on their real estate. In addition the express companies pay a 2 per cent tax on their gross earnings from within the state and a local tax on their realty and personalty. And

yet, when we consider that the capital value of such companies is estimated to be about six times their gross earnings, the assessment of $1,430,930 on the three express companies referred to above is but little more than one-fourth of their real value in Ohio as measured from local earnings, and as the interstate traffic is not returned, it is impossible to determine how much more inadequate it is.

Railroads are assessed in accordance with the general property tax and a small charge on their gross receipts. Sleeping and palace car and freight line and equipment companies are assessed at the rate of 1 per cent on a proportion of their capital stock, which when the receipts are contemplated, shows, either that the companies are owned by the bondholders, or that their mileage in Ohio is very small, for the tax yielded in 1896 but $13,124, showing a capitalized value of but $1,312,400 for the State of Ohio.

The rate of one-half of 1 per cent on the various forms of municipal public service corporation and railroad and pipe-line companies, is certainly not onerous, especially in view of the fact that some of these corporations pay practically no local taxes.

Conclusion.

All of the above corporations are alike, and differ from ordinary mercantile and industrial corporations in this, that much of their value lies in their franchise. They are all *quasi*-public in contemplation of the law and such of them as are transportation and transmission companies enjoy the right of eminent domain. They are moreover natural monopolies from the fact that they occupy favored positions in the highways, or perform functions so necessary that the public has no choice but to use them. The distinction is so apparent that it need not be dwelt upon.

How best to tax such values has been one of the problems of tax commissions, legislators and experts, and even at

this late day there is no unanimity or even general agreement on the subject. In fact, the methods of corporation taxation in our states are little less than chaotic. In many states we find systems similar to the general property tax described in Ohio. In others they are taxed by licenses, on net or gross earnings, or on the capital stock. In others a graded tax based on the gross earnings per mile is found; or a locomotive tax, while in a considerable number of states a mixed system of two or three methods exists.

In general, it would seem that any attempt to reform the evils of the present system in Ohio or any other American state, without that sort of radical alteration which is probably out of the question by reason of constitutional restrictions, should be governed by certain conditions which seem to exist. In brief, these may be said to be as follows:

I. In the first place, real estate is disproportionately burdened in all parts of the state, but especially in the large cities. Personal property, while by law subject to taxation almost without exemption and with the most stringent measures enacted to secure its assessment, is seldom returned save in the rural districts, where it cannot escape the assessor's notice. Every conceivable device of the legislator to get personal property on the duplicate has failed here as elsewhere, and realty can hope for but little relief from this source. In the large cities the taxes on real estate are well nigh confiscatory of its earnings. In Cleveland, as stated above, the rate ranges from 16 to 25 per cent of the gross annual rentals. A measure of relief can be secured to this class of wealth by the more equitable taxation of corporations.

II. As appears above, the present system lacks unity of design or operation, and is most discriminating as between different classes of corporations.

III. Much of the value of a public service corporation lies in its franchise. It is as absurd to assess a railroad by an inventory of its constituent elements as it would be to assess

an engine by its bolts, rivets, rods, wheels and parts; or a boiler by its plates, pipes and elements. We see this fact when the public attempts to purchase a gas or water plant. It is asked to buy it as a going concern, as a unit, measured by its stock valuation. In some states the community is compelled to accept this valuation in appropriation proceedings, while the appraiser is asked to approach it as so much scrap iron. Its franchise is the value the investing public places upon it as a unit, and this is fixed by its earning power. The value of a plat of ground is determined in the same way, its franchise value is its rental. And in corporations this value for purposes of taxation can only be reached through its stock and bonds or by the capitalization of net earnings. But as net earnings are elusive and difficult to define, and even more difficult to secure, it is believed the former method based on stock and bonds is the only just basis of assessment.

In 1892, Pennsylvania through the purely voluntary concerted efforts of the several commercial and industrial interests of the state, including the railroads, took up the matter of taxation and devoted its energies to evolving a system suited to the needs of the state and conformable to the constitution. Its reports are among the most exhaustive statistical investigations ever made on valuation and taxation. Through committees, the conference labored for a period of three years and expended large sums of money which were voluntarily contributed. At the close of its work, a bill was drafted embodying the conclusions of the conference, which provided among other things for the relinquishment of existing taxes on railroads, imposed on capital stock and gross earnings, and substituted therefor an arbitrary rate of four mills on the dollar, on a valuation obtained by adding to the par value of the bonds of a road, if the bonds were at or above par, or the market value if below par, the market value of the stock. Roads crossing state lines were to be valued by taking the value of the entire stock and bonds of

the system, and assuming that the proportion which the mileage of road lying in Pennsylvania bore to its total mileage was the proportion of the stock and bonds of the road to be taxed by the state. Receipts from this source were to be devoted to state purposes. In consideration of this assessment, the roads were to be relieved from local taxation, except as to such real estate as was not necessary to the enjoyment of the franchise.

This valuation was subject to reduction to the extent of any holdings of the company in the stock or bonds of roads already taxed, as well as by certain other allowances. A measure somewhat the same in principle was introduced into the last session of the Ohio legislature and is to be found in Indiana. The same principle underlies the Nichols Law.

It is believed that the Pennsylvania plan of valuation as a unit from the stocks and bonds has more to commend it than any other thus far proposed.

And not the least of these advantages is the fact that the plan has been passed on by the courts and has been found to be in harmony with the constitutions of our states and with the "commerce clause" of the federal constitution.

It is true in most of the cases heretofore referred to the valuation was not made up by including the bonded debt, but from the stock capital alone or other indexes. Yet the method suggested is supported by high judicial authority.

Under an Illinois statute of 1872, the Board of Equalization of that state promulgated a substantially similar plan, which was passed upon by the Supreme Court of the United States, in the State Railroad Tax Cases, 92 U. S. 575, Mr. Justice Miller saying, p. 604:

"It may be assumed for all practical purposes, and it is, perhaps, absolutely true that every railroad company . . . . has a bonded indebtedness secured by one or more mortgages. The parties who deal in such bonds are generally keen and far-sighted men, and most careful in their investments. Hence the value which those securities

hold in the market is one of the truest criteria, as far as it goes, of the value of the road as a security for the payment of those bonds. These mortgages, are, however, liens on the road, and taking precedence of the shares of the stockholder, may or may not extinguish the value of his shares. They must, in any event, affect that value to the exact amount of the aggregate debts. For all that goes to pay the debt, and its interest diminishes *pro tanto* the dividend of the shareholder, and the value of his shares. It is therefore obvious that when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have by the action of those who, above all others, can best estimate it, ascertained the true value of the road, all its property, its capital stock, and its franchises, for these are all represented by the value of its bonded debt, and the shares of its capital stock."

In the case of P. C. C. & St. L. Ry. *v.* Backus, 154 U. S. 429, the judgment in the State R. R. Tax Cases was cited and approved, and Mr. Justice Brewer said (p. 420), "The stock and the indebtedness represent the property."

The plan suggested has also the sanction of no less distinguished a jurist than C. Stuart Patterson, of the Philadelphia Bar,* and is believed not to be in conflict with the decision of the United States Court in State Tax on Foreign Held Bonds, 15 Wallace, 300.

It is to be borne in mind moreover that American corporations of this character are seldom built by stock subscribed. They are constructed from bonds sold, the stock being distributed to the promoters or given as a bonus to bond buyers. Hence the bonds represent the actual investment in the property. If the stock enjoys a value it is due to the fact that the earnings of the road give it such. The stock value represents the franchise and as such evidences the earning capacity of the corporation.

But aside from the legal consideration, the method commends itself because of its fairness and equity. It enables a state to reach receipts from, and value given by, interstate traffic, as assessments based upon earnings, whether gross

*See printed speech before the Committee of Ways and Means of Pennsylvania Legislature, March 19, 1875.

or net, cannot. With the progress of consolidation and the increase of receipts from interstate traffic, this becomes a consideration of first importance. This method also secures the franchise value given to stock by earnings and places it on the duplicate, a value which eludes any other method of assessment. It takes into consideration the differences in cost of construction and cost of operation, both elements of considerable importance which cannot be contemplated in taxation by actual visible property or by license taxes, fees, taxes on gross or net receipts or other plans now in vogue. Moreover, assessments are not liable to undervaluation on the part of local officials for the quotations of stocks and bonds are a matter of public information and easily accessible. Nor can the basis be concealed as is possible in any plan based on net receipts. In fact, of all the plans suggested for the taxation of this form of property, it seems liable to the least objections, and judging from the number of measures passed or introduced into various state legislatures in recent years founded upon this plan, it is destined to pretty general adoption.

But it is open to objections and these of no light nature. In the first place, it is productive of double taxation, for not only is the road taxed on a valuation obtained from its stocks and bonds, but the stocks and bonds themselves are again taxable in the hands of the individual holders. But as to this, it may be answered, in part at least, that but an inconsiderable portion of this form of personal property is ever returned for taxation, and the injustice to the individual holder is but slight as compared to the advantage to the state. Moreover, double taxation now exists none the less in valuation based on tangible property. It may further be objected that a considerable portion of our railroad property pays no dividends or is in the hands of receivers. Its stock therefore either has no value or a fictitious one for voting purposes. But where the stock has become valueless, it is, of course, not considered under the plan proposed, and if

held for its voting power, it differs but little from real estate held for speculative purposes, and no more should it be exempt from taxation. In fact, the franchise value of a railroad is not dissimilar from the rental value of real estate. Earth is, *ceteris paribus*, as valuable in Nevada as in New York City, and yet the latter has a place value due to conditions, which appear on the tax duplicate because of its rental yield.

The above reasoning applies with even greater force in the case of corporations of a local character. The earning capacity and value of street railways, gas, water and electric lighting companies is reflected in the stock of such corporations with considerable accuracy, and a valuation thus obtained from stock and bonds is a pretty correct measure of the property in the eyes of the commercial world, and this should be the measure for purposes of taxation.*

Such a plan would contemplate the abandonment of the present methods of assessing railroads, palace, sleeping car, telephone, telegraph, express, pipe line and freight line companies, as well as all other transmission and transportation companies of an intercounty or interstate character, whether assessed locally on real estate or by a state board, and the adoption of a uniform method of assessment through

* By a wholly different procedure, the warmly contested Ford Bill passed by the General Assembly of the State of New York in its 1899 session aimed to secure the same result in the taxation of quasi-public municipal corporations. This bill, however, sought to reach franchise value by a legal description of real estate so as to include it as property. The caption of the act is "In Relation to the Taxation of Public Franchises as Real Property," and it defines "land," "realty," and "real property" to "include the land itself above and under water, all buildings and other articles and structures, sub-structures and super-structures, erected upon, under or above, or affixed to the same. . . . All bridges, all telegraph lines, wire, poles and appurtenances , . . all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same, in, under, above, on or through streets, highways or public places; the railroad structures, sub-structures and super-structures, tracks and the iron thereon, etc." The act is made applicable to wharves and piers, bridges, telegraph lines, surface and elevated roads, railroad structures; mains, pipes and tanks, laid or placed in any public or private street or place for conducting steam, heat, water, oil, electricity, or any property, substance or product capable of transportatation or conveyance therein.

a central state agency, through returns of the company and other sources of their stock, bonds, earnings and the like. In the same way the real estate and personalty tax on local corporations of a *quasi*-public character, such as gas, water, electric lighting, street car and conduit companies should be abandoned and in its stead substituted a tax, obtained either by the county auditor or the state authorities from the stock and bonds of the corporations.

Not the least of the advantages of this plan would be the uniformity which would result, by which it would be possible to determine the taxes borne by different classes of property. Moreover, it is believed that the increased revenues which would accrue, especially if corporations of a state character were taxed exclusively for state purposes, would enable the state to relinquish entirely real estate personalty from the state rate, and thus secure a divorce of state and local taxation, which is one of the cardinal necessities of reform in state and local taxation.

The distribution of the revenues from corporations of an intercounty character is a matter of detail. They may be devoted exclusively to the state fund, and state taxes on local property be abated to this extent as suggested above, or the valuation as obtained by the central authority may be certified to the several counties through which the roads or companies pass in proportion to the county mileage or county receipts, and by them placed on the local assessment roll. Either plan would result in considerable relief to the burdens now borne by real estate—burdens which in many communities are out of all proportion to its value or the taxes paid by other forms of wealth.

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